

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 10, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THOMAS NOVAK,

Plaintiff,

v.

JOHN HERNANDEZ,

Defendant.

No. 2:21-cv-00157-SMJ

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS**

Before the Court is Defendant John Hernandez’s Motion to Dismiss for Lack of Jurisdiction, ECF No. 7. Plaintiff, proceeding pro se, opposes the motion, ECF No. 18. Having reviewed the pleadings and the file in this matter, the Court is fully informed and grants the motion.

BACKGROUND

On February 22, 2021, Plaintiff Thomas Novak filed a lawsuit against FBI Task Force Officer John Hernandez (“TFO Hernandez”) in the Small Claims Department of the District Court of Spokane County, Washington. ECF No. 1-1. The lawsuit stems from a minor vehicle accident in which Mr. Novak allegedly sideswiped TFO Hernandez’s federal law enforcement vehicle. At the time of the accident, TFO Hernandez was acting as a federal law enforcement officer. ECF

1 No. 2 at 2.

2 Despite being cited as at-fault for the accident, Mr. Novak sued TFO
3 Hernandez, claiming \$4,000 in damages sustained to his vehicle. ECF No. 1-1.
4 Plaintiff's Complaint alleges TFO Hernandez treated him poorly while
5 exchanging information and appears to suggest that TFO Hernandez persuaded
6 the investigating Spokane Police Officer to find Mr. Novak at fault for the
7 accident. *Id.*

8 On May 6, 2021, TFO Hernandez removed the lawsuit to this Court under
9 the federal officer removal statute. ECF No. 1. Shortly thereafter, TFO
10 Hernandez filed a motion to dismiss Plaintiff's lawsuit under the derivative
11 jurisdiction doctrine. After being granted several final opportunities to respond,
12 Mr. Novak filed a one-page response and accompanying declaration of a
13 third-party witness. Both the response and declaration address only the merits
14 of Plaintiff's claim—not the jurisdictional issue raised by Defendant.

15 **LEGAL STANDARD**

16 The jurisdiction of the federal courts is limited to "cases" and
17 "controversies." U.S. CONST. art. III, § 2. If a federal court determines at any time
18 that it lacks subject matter jurisdiction, it must dismiss the action. Fed. R. Civ.
19 P. 12(h)(3).

1 A plaintiff may not sue a federal officer acting within the scope of his
2 duty in a state court. *Rodriguez v. United States*, 788 F. App'x 535, 536 (9th Cir.
3 2019) (“The FTCA’s limited waiver of the United States’ sovereign immunity does
4 not extend to suits filed in state court.”). Accordingly, the Washington state court
5 where Plaintiff filed his claim lacked subject matter jurisdiction. In turn, this case
6 must be dismissed under the derivate jurisdiction doctrine. The derivative
7 jurisdiction doctrine provides that if a state court lacks jurisdiction over a case, a
8 federal court does not acquire jurisdiction on removal. *Minnesota v. United States*,
9 305 U.S. 382, 235 (1939). Although the doctrine has been abolished with respect to
10 the general removal statute, 28 U.S.C. § 1441(a), the Ninth Circuit has repeatedly
11 held that the doctrine still applies to the federal officer removal statute. *See, e.g.*,
12 *Cox v. U.S. Dep’t of Agric.*, 800 F.3d 1031, 1032 (9th Cir. 2015).

13 Because the state court lacked subject matter jurisdiction over Plaintiff’s
14 lawsuit and Defendant removed it under the federal officer removal statute, this
15 Court does not have jurisdiction to hear this matter and it must be dismissed.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 **1.** Defendant’s Motion to Dismiss for Lack of Jurisdiction, **ECF No. 7**,
18 is **GRANTED**.

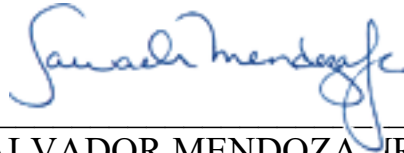
19 **2.** Defendant’s Second Motion to Dismiss, **ECF No. 20**, is **DENIED AS**
20 **MOOT**.

1 **3.** Plaintiff's claims against Defendant are **DISMISSED WITHOUT**
2 **PREJUDICE.**

3 **4.** The Clerk's Office is **DIRECTED** to **ENTER JUDGMENT** and
4 **CLOSE** the file.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
6 provide copies to all counsel.

7 **DATED** this 10th day of November 2021.

8 

9 _____
SALVADOR MENDOZA, JR.
United States District Judge